Banner & Witcoff wins again in the Federal Circuit.

March 5, 2005

On March 7th, a Federal Circuit panel of Judges Lourie, Clevenger and Schall granted a motion filed by Banner & Witcoff on behalf of Toshiba International Corporation to dismiss for lack of jurisdiction Halmar Robicon Group, Inc.'s appeal from a judgment of non-infringement of U.S. Patent No. 5,625,545. (Halmar Robicon Group, Inc., v. Toshiba International Corporation, No. 04-1600).

In the district court, B&W obtained for Toshiba a grant of summary judgment that Toshiba's power drives did not infringe Robicon's '545 patent. Toshiba was also granted judgment on all remaining counts (Toshiba's declaratory judgment counts). A few days after entry of the district court's judgment, Robicon's parent corporation filed a Chapter 11 petition in bankruptcy on behalf of itself and all of its subsidiaries, including Robicon. Without notifying the district court of the bankruptcy filing, Robicon filed a motion to amend the district court's judgment as to Toshiba's declaratory judgment counts, but did not file a motion directed to the court's judgment of non-infringement entered on Robicon's infringement claim. Believing the time to appeal had been extended by its motion to amend and that the Chapter 11 petition had stayed the case pursuant to the automatic bankruptcy stay, 11 U.S.C. 362(a), Robicon delayed filing a notice of appeal of the judgment of non-infringement until shortly after it emerged from bankruptcy, nearly seven months after the entry of final judgment. The Federal Circuit, holding that the automatic bankruptcy stay only applies to claims against a debtor and does not apply to claims brought by a debtor, dismissed the appeal of Robicon's infringement claim as untimely.

Congratulations to the B&W litigation team of Joe Potenza, Nina Medlock, Steve Chang, and lead counsel Bob Altherr, who with assistance from Bradley Wright, obtained this appellate victory for Toshiba.

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